



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 16423786

Date: JUL. 29, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a neurosurgeon and researcher, seeks second preference immigrant classification as a member of the professions holding an advanced degree and as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and a brief asserting that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

Furthermore, while neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. In the decision, the Director decided that the Petitioner did not demonstrate eligibility for any of the three prongs under the *Dhanasar* analytical framework.

The first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. At initial filing and in response to the Director's request for evidence (RFE), the Petitioner submitted statements of his intentions in the United States. However, the Petitioner did not provide sufficient information and details to reflect a specific proposed endeavor as contemplated in *Dhanasar*. Instead, the Petitioner generally claimed to pursue work in "research, industry, and academics" without identifying what he specifically planned to do in any of those "facets of life." For example, while the Petitioner asserted that his "research has multiple application areas," he did not identify and elaborate on the research he intended to conduct. Likewise, the Petitioner broadly indicated that he is "striving to develop and contribute more in the medical industry and economic[] growth by contributing with new concepts and ideas" and is "already making an impact as a staff faculty of a neurosurgical residency and as a researcher fellow working with observers and medical students, giving support, guidance, orientation and teaching" without specifically showing what he intends to develop and contribute.

In addition, in support of his claims, the Petitioner referenced statistics for stroke deaths in the United States from the "Heart Disease and Stroke Statistics 2017 Update: A Report from the American Heart Association" but did not submit the report to support his assertions. Accordingly, in light of offering a vague endeavor, the Petitioner did not demonstrate the substantial merit and national importance of his proposed endeavor.

Similarly, in the response to the RFE, the Petitioner again made broad claims, such as "I intend to provide the best care possible for patients here in the USA and treat all these neurosurgical conditions, specially the cerebrovascular disorders and offer cutting edge treatments in order to maintain the American people's health and consequently perpetuate the greatest economy in the world," "I plan to continue to broaden the range and continue to develop and improve scientific research with new boundaries, knowledge and groundbreaking ideas utilizing my great experience, knowledge and skills to produce impactful data that enhances healthcare in the USA," "I intend to collaborate with the medical industry in the USA, in order to facilitate the blossoming, evolution and spread of new technology that helps patients, and consequently affects the economy creating jobs and developing the market," and "I plan to strive in the academic aspect of life, . . . as a Research Fellow, Clinical Fellow and Neurosurgical Simulation Fellow working with pre-graduate and postgraduate students, observers, medical students, fellow physicians and neurosurgeons

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

mentoring, giving support, guidance, orientation and teaching.” Again, the Petitioner did not sufficiently explain and provide details to satisfy a specific proposed endeavor consistent with *Dhanasar*’s first prong requirements.

Moreover, in the cover letter accompanying the RFE response, the Petitioner referenced submitted documentation and articles relating to the economic impact of physicians and workforce shortages of neurosurgeons and stroke specialists in the United States. While the evidence might relate to substantial merit, it is important to note that the shortage of neurosurgeons and physicians in the United States does not render his potential employment nationally important under the *Dhanasar* framework. In fact, such shortage of qualified workers is directly addressed by the U.S. Department of Labor (DOL) through the labor certification process. Further, the Petitioner did not establish the national importance of his prospective employment at a hospital, institution, or other medical organization. In *Dhanasar*, we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. The Petitioner did not show that his future employment would impact the neurological or medical fields more broadly at a level commensurate with national importance.

On appeal, the Petitioner contends that he “proposes two related endeavors, as a medical practitioner and as a researcher.” As it relates to a medical practitioner, the Petitioner claims:

[He] aims to achieve full accreditation as a medical doctor in the United States and treat thousands of patients in the United States throughout his career. His particular specialization in Neurosurgery is a field which is already experiencing a shortage in the United States. As the United States population becomes older on average, this shortage is expected to become significantly more serious. Only about 160 new Neurosurgeons are graduating from medical residency programs per year in the United States, which is not nearly enough to address the growing shortage which is expected in the coming decades.

The Petitioner provides two new articles, as well as a previously submitted article, relating to workforce shortages of neurosurgeons in the United States. However, we will not consider this evidence for the first time on appeal as it was not presented before the Director. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (providing that if “the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial, we will not consider evidence submitted on appeal for any purpose” and that “we will adjudicate the appeal based on the record of proceedings” before the Chief); *see also Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). For the reasons previously discussed above, shortages of neurosurgeons do not render potential employment nationally important under the *Dhanasar* framework and are directly addressed by DOL through the labor certification process. In addition, the Petitioner did not demonstrate the national importance of his futuristic employment as a neurosurgeon and how it would sufficiently extend beyond his potential employer and patients to impact the field more broadly. Furthermore, the Petitioner did not establish how his employment would reach the level of “substantial positive economic effects” as contemplated by *Dhanasar*. *Id.* at 890.

Regarding as a researcher, the Petitioner contends that:

[H]is research reports on new treatment techniques in the [] and [] subareas of Neurosurgery. Several of the articles report on new surgical techniques, individual case studied patients, post treatment complications and clinical outcomes. These research publications amount to concrete contributions in the field, which can provide insight for researchers and practicing surgeons. Implementation of the findings in these articles in surgeries over the course of many years will have an impact on the health and well-being of thousands of neurosurgical patients, rising to a “potential prospective impact” commensurate with a finding of National Importance.

....

[His] previous record of success in research is more than sufficient to evidence that he will continue to impact the field in similar ways throughout his career, thus making a nationally important impact in his field and in the lives of thousands of patients

He also provides three “examples of his research and publications,” such as articles relating to [], steps in treatment for [] stroke patients, and the [] [], and claims that “[t]hese articles represent only a small part of [his] overall research in the area” and “[he] will continue to produce new and innovative research in the area, thus advancing the field and providing a benefit which will help thousands of patients and physicians.” He also submits his updated citation history and an article from rarediseases.org relating to [].

Here, the Petitioner makes arguments regarding his past research, findings, and publications and references his “previous record of success in research.” In general, the Petitioner’s previous work relates to the second prong of the *Dhanasar* framework, which “shifts the focus from the proposed endeavor to the foreign national.” *Id.* at 890. The issue here is whether the specific endeavor that he proposes to undertake has substantial merit and national importance under *Dhanasar*’s first prong. In this case, the Petitioner did not present a specific endeavor before the Director and did not sufficiently demonstrate what he intended to pursue in the United States rather than broadly claiming research. He did not differentiate his proposed endeavor from his past work. Even if he offered a specific proposed endeavor before us, we would not consider it for the first time on appeal. *Soriano*, 19 I&N Dec. at 766; *see also Obaighbena*, 19 I&N Dec. at 533. Regardless, the Petitioner asserts that he “will continue to produce new and innovative research in the area,” without presenting a specific, detailed proposal sufficiently explaining what research he intends to pursue.

For these reasons, the Petitioner’s proposed endeavor does not meet the first prong of the *Dhanasar* framework. Further analysis of his eligibility under the second and third prongs, therefore, would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not demonstrated that he is eligible for or otherwise merits a national interest waiver as a

matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.